

19 NCAC 02E .0603 is proposed for amendment as follows:

19A NCAC 02E .0603 ISSUANCE OR DENIAL OF PERMIT FOR A FACILITY

(a) ~~Within 30 days following receipt of the application; the Division Engineer shall approve or deny the application.~~ If the application for vegetation cutting is for a site located within the corporate limits of a municipality and if the municipality has previously advised the Division Engineer in writing of its desire to review such applications, the applicant shall deliver the application to the municipality at least 30 days prior to submitting the application to the Department, so that local officials shall be given the opportunity to review the application. The applicant, as part of the application, shall state in writing the date that he has delivered a copy of the application with required attachments to a municipality which has previously advised the Department in writing that it seeks to review such applications. After the 30-day municipal review period has concluded and all required documentation has been received by the Department, including the fee set out in G.S. 136-18.7, the Division Engineer shall have 30 days to approve or deny the application. If written notice of approval or denial is not given to the applicant within the 30-day Department review period, the application shall be deemed approved. If the application is denied, the Division Engineer shall advise the applicant, in writing, of the reasons for denial.

(b) The application shall be denied by the Division Engineer if:

- ~~(1) It requires removal of trees that were in existence before the business or advertisement was established. An existing tree shall be one that is four inches in diameter as measured six inches from the ground.~~
- ~~(2)~~ (1) The application is for the opening of view to a facility sign or business which has been declared illegal or is currently involved in litigation with ~~the department.~~ Local, State, or Federal governments.
- ~~(3)~~ (2) It is determined by Departmental personnel that the facility ~~or advertisement~~ is not screened from view.
- ~~(4)~~ (3) The application is for the opening of view ~~to an outdoor advertising sign which was obscured from view at the time of erection of the sign.~~ to undeveloped property or to a facility that, due to obstructions off the right of way, is screened from view from the travel way regardless of the presence or absence of trees and other vegetation on the highway right of way.
- ~~(5)~~(4) Removal of vegetation will adversely affect the safety of the traveling public.
- (5) The application is solely for providing visibility to on-premise signs.
- (6) ~~Trees, shrubs, or other vegetation of any sort were planted in accordance with a local, State, or Federal beautification project.~~ The application is for the removal of vegetation planted in accordance with a local, State, or Federal beautification project. However, if a mitigation replanting plan which is related to the site for which the vegetation permit request is made (as set forth in 19A NCAC 02E .0611 except for the provisions in Paragraph (d) and Subparagraph (g)(11)) is approved by the applicant, the Department, and if applicable, the Federal Highway Administration then this subsection does not apply.

1 ~~(7) — Planting was done in conjunction with a designed noise barrier.~~

2 ~~(8)(7) The applicant has not performed satisfactory work on previous requests under the provisions of the~~
3 ~~Rules in this Section (this may not be cause for denial if the applicant engages a landscape~~
4 ~~contractor to perform the work). On two previous occasions, the applicant has failed to meet the~~
5 ~~requirements of a selective vegetation removal permit. This is not cause for denial if the applicant~~
6 ~~engages a landscape contractor to perform the current work.~~

7 ~~(9)(8) It involves opening of views to junkyards.~~

8 ~~(10) — The application is contrary to ordinances or rules and regulations enacted by local government,~~
9 ~~within whose jurisdiction the work has been requested to be performed.~~

10 ~~(9) The applicant fails to provide all documentation required by statute and rule.~~

11 ~~(10) If any cutting, thinning, pruning, or removal of vegetation encompassing the entirety of the~~
12 ~~maximum vegetation cutting or removal zone is prohibited due to conservation easements or State~~
13 ~~or Federal rules, statutes, or permits.~~

14 ~~(11) If unlawful destruction or illegal cutting of vegetation has occurred within the highway right-of-~~
15 ~~way to create, increase, or improve a view to the facility from the travel way including~~
16 ~~acceleration and deceleration ramps, the Department shall not issue a selective vegetation removal~~
17 ~~permit for a period of five years. For the purposes of this section, unlawful destruction or illegal~~
18 ~~cutting is defined as the destruction or cutting of trees, shrubs, or other vegetation on the State-~~
19 ~~owned or State-maintained rights-of-way by anyone other than the Department or its authorized~~
20 ~~agents, or without written permission of the Department.~~

21
22 *History Note: Filed as a Temporary Rule Eff. April 13, 1982 for a Period of 48 Days to Expire on June 1, 1982;*
23 *Authority G.S. 136-130; 136-18(5); 136-18(7); 136-18(9);136-93.*
24 *Eff. June 1, 1982;*
25 *Amended Eff. August 1, 2000; November 1, 1991; December 1, 1990; August 1, 1985; June 2,*
26 ~~*1982; 1982; November 1, 2012.*~~
27 *Temporary Amendment Eff. March 1, 2012.*